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April 8, 2021

**VIA ELECTRONIC FILING**

The Honorable Jocelyn G. Boyd  
Chief Clerk/ Executive Director  
Public Service Commission of South Carolina  
101 Executive Center Drive, Suite 100  
Columbia, SC 29210

**Re: James T. Simmons v. Duke Energy Carolinas, LLC**  
**Docket Number: 2021-95-E**

Dear Ms. Boyd:

On March 16, 2021, the Clerk's Office docketed the Complaint that was filed in the above-referenced docket by Mr. James Simmons. Pursuant to S.C. Code Ann. Regs. 103-830, a respondent has 30 days from the receipt of the Complaint to file and serve its answer. Therefore, Duke Energy Carolinas, LLC's (the "Company") answer to Mr. Simmons' Complaint is not due until Thursday, April 15, 2021.

On March 22, 2021, Jerisha Dukes was assigned as the Hearing Examiner in this docket and a scheduling notice was issued. The scheduling notice set the following procedural schedule:

DEC & ORS Direct Testimony – April 12, 2021  
Complainant Responsive Testimony – April 22, 2021  
Virtual Hearing – June 21, 2021

The current procedural schedule requires the Company to file direct testimony prior to the deadline for its answer or other responsive pleading. Therefore, the Company respectfully requests the Clerk's Office issue a revised scheduling notice setting a new procedural schedule in which the Company's testimony is not due prior to its answer or other responsive pleading.

While the Company does not believe that the Complainant in this case should be required to file direct testimony, the Company reiterates its *general* belief that Complainants, consistent with S.C. Code Ann. Regs. 103-842(C), should be required to file direct testimony prior to the Respondent filing its own direct testimony. The Company recognizes that in certain cases—including in this case—requiring the Complainant to file direct testimony would be unnecessary where the facts are limited, non-complex, and sufficiently provided within the Complaint. The Company also recognizes that the Commission's *Pro Se* Litigant Guide provides that "[t]he information presented in the complaint form will serve as your prefiled testimony for your case." Nevertheless, in some cases, the Complaint is insufficient for anyone—the Commission or the Company—to understand why the Complainant believes he is entitled to relief and the actual positions to be taken by the Complainant in the

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proceeding. In those cases, the Company firmly believes that principles of procedural fairness require Complainant to prepare and file direct testimony prior to the Company filing its own testimony.<sup>1</sup> While the facts in this case appear to be sufficiently limited such that the Complaint may be appropriately relied upon to serve as the Complainant's direct testimony, the Company wanted to reiterate its position that this practice is not universally appropriate.

By copy of this letter we are serving the same on the parties of record.

Sincerely,



Katie M. Brown

cc: James T. Simmons (via U.S. Mail and email)  
 Alexander W. Knowles, Office of Regulatory Staff (via email)  
 C. Lessie Hammonds, Office of Regulatory Staff (via email)  
 Carri Grube Lybarker, Department of Consumer Affairs (via email)  
 Roger P. Hall, Department of Consumer Affairs (via email)  
 Heather Shirley Smith, Duke Energy Carolinas, LLC (via email)  
 Rebecca J. Dulin, Duke Energy Carolinas, LLC (via email)  
 Jerisha Dukes, Public Service Commission of South Carolina (via email)

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<sup>1</sup> See Order No. 1996-629 at 2, Docket No. 1996-259-WS (Sept. 10, 1996); see also S.C. Code Ann. Regs. 103-802 (“[The Commission’s regulations concerning Practice and Procedure] are intended to insure that all parties participating in proceedings before the Commission will be accorded the procedural fairness to which they are entitled by law.”); *Ross v. Med. Univ. of South Carolina*, 317 S.C. 377, 381, 453 S.E.2d 880, 883 (1994) (“[A] reviewing court has the duty to examine the procedural methods employed at an administrative hearing to ensure that a fair and impartial procedure was used.”).